

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re BARBARA REBECCA EINSET,

Debtor,

_____ /

PHILIP R. HERCIK, JR.,

Appellant,

File No. 1:09-CV-324

v.

HON. ROBERT HOLMES BELL

STEPHEN LANGELAND, Trustee,

Appellee.

_____ /

MEMORANDUM OPINION AND ORDER

This matter is currently before the Court for a ruling on Appellant Philip R. Hercik's appeal of the bankruptcy court's February 20, 2009, order confirming sale of real estate. (Dkt. No. 1, Attach. 1.)

I.

Appellant has raised three arguments on appeal: (1) the bankruptcy court abused its discretion in denying Appellant's objection to the sale of the real estate; (2) the bankruptcy court abused its discretion in denying Appellant's request for a stay pending appeal; and (3) the bankruptcy court erred in acting on the sale of the real estate without first re-opening the adversary proceeding. In light of these alleged errors, Appellant has requested the Court to reverse the order confirming sale and the order denying stay on appeal.

On appeal this Court reviews the bankruptcy court's findings of fact for clear error and its conclusions of law de novo. *In re Rembert*, 141 F.3d 277, 280 (6th Cir. 1998); Fed. R. Bankr. 8013.

This Court has already denied Appellant's motion for emergency stay pending appeal. (Dkt. No. 12, Mot; Dkt. No. 18, 05/01/2009 Order.) The motion for emergency stay was denied based upon this Court's determination that the bankruptcy court did not abuse its discretion in denying the motion for stay filed in the bankruptcy. (Dkt. No. 17, Op. 3.) This Court also noted that because the property had already been sold, the appeal appeared to be moot. (*Id.* at 4.)

In its brief in response to the appeal, the Trustee contends that the appeal is moot because there was no stay pending appeal, the property has been sold, title to the real estate has been transferred, and the net sale proceeds have been distributed. Appellant did not file a reply brief contesting the Trustee's argument.

This Court agrees with the Trustee that the appeal is moot. This Court has already determined that the bankruptcy court did not abuse its discretion in denying Appellant's request for a stay pending appeal. In the absence of a stay pending appeal, this Court cannot affect the validity of the sale of property on appeal. 11 U.S.C. § 363(m). Accordingly,

IT IS HEREBY ORDERED that the bankruptcy court's order confirming sale and order denying stay on appeal are **AFFIRMED**, and this appeal is **DISMISSED**.

Dated: December 4, 2009

/s/ Robert Holmes Bell
ROBERT HOLMES BELL
UNITED STATES DISTRICT JUDGE